Ontario
Office of the
Employer Adviser

OEA: Office of the Employer Adviser

Employers Guide to Workplace Safety and Insurance

Revised April 15, 2005

The Office of the Employer Adviser is an independent agency of the Ministry of Labour funded by employer WSIB premiums and administration fees.

© Queen's Printer for Ontario, 2005
ISBN 0-7794-7775-8 (Print)
ISBN 0-7794-7776-6 (Internet)

Employers Guide to Workplace Safety and Insurance

This guide is designed to help employers manage workplace safety and insurance and provides basic information and answers to frequently asked questions. Since the workplace safety and insurance system is complex, you might have more questions than we could include in this guide. If you need help to apply this information to your particular situation please contact:

OFFICE OF THE EMPLOYER ADVISER (OEA)
151 Bloor Street West, Suite 704
Toronto, Ontario M5S 1S4
416-327-0020
1-800-387-0774
www.gov.on.ca/lab/oea

The information in this guide is based on the *Workplace Safety and Insurance Act, 1997,* which came into effect on January 1, 1998.

EMPLOYERS GUIDE TO WORKPLACE SAFETY and INSURANCE

Table of Contents

OFFICE OF THE EMPLOYER ADVISER (OEA) **2**

WHAT IS THE OEA AND HOW CAN IT HELP ME? 2
WHAT TYPES OF SERVICES DOES THE OEA PROVIDE EMPLOYERS? 2
Advice *2*
Representation *2*
Education *2*
HOW DO I CONTACT THE OEA? 2

INTRODUCTION **3**

WHAT IS WORKPLACE SAFETY AND INSURANCE? 3

REGISTRATION **3**

DO I HAVE TO REGISTER WITH THE WSIB? YES. 3
DO INDEPENDENT OPERATORS / CONTRACTORS NEED TO REGISTER? NO. 3
HOW DO I REGISTER? 3
IS THERE A PENALTY IF I DON'T REGISTER? YES. 4

COVERAGE **4**

WHO IS COVERED BY THE WSIA? 4
WHO IS NOT COVERED BY THE WSIA? 4
WHAT TYPES OF INDUSTRIES ARE COVERED BY THE WSIA? 5
WHAT TYPES OF COVERAGE EXIST? 6

EMPLOYER COSTS **6**

WHAT DO I HAVE TO PAY TO THE WSIB? 6
ARE THERE OTHER SITUATIONS WHEN I MAY HAVE TO PAY THE WSIB? YES. 7
WHAT ARE EXPERIENCE AND MERIT RATING PROGRAMS? 7
ARE THERE DIFFERENT TYPES OF EXPERIENCE AND MERIT RATING PROGRAMS? YES. 7
NEW EXPERIMENTAL EXPERIENCE RATING (NEER) 7
2004 NEER Changes *8*
COUNCIL AMENDMENT TO DRAFT #7 (CAD-7) 8
2004 CAD-7 Changes *9*
MERIT ADJUSTMENT PREMIUM (MAP) 9
ARE THERE WAYS IN WHICH I CAN CONTROL THE SIZE OF MY REBATE OR SURCHARGE? YES. ... 10
Prevention: *10*
Early and Safe Return to Work: *10*
Cost Relief: *10*

CONTRACTING OUT WORK **10**

IF I CONTRACT OUT WORK SHOULD I BE CONCERNED ABOUT WORKPLACE SAFETY AND INSURANCE? YES. 10

ACCIDENTS 11

WHAT IS AN "ACCIDENT"? 11
WHAT STEPS SHOULD I TAKE IF AN ACCIDENT HAPPENS? 12
WHAT COULD AN INJURED WORKER GET PAID, IF THE CLAIM IS ALLOWED? 13
HOW LONG DOES A WORKER RECEIVE LOE BENEFITS? 13
WHAT TYPES OF INJURY COSTS ARE COVERED BY THE WSIB? 13
HOW DOES THE WSIB DECIDE WHETHER A WORKER IS ENTITLED TO LOE PAYMENTS AND OTHER SERVICES? 14

RETURN TO WORK 14

WHY WOULD I WANT TO BRING AN INJURED WORKER BACK TO WORK? 14
ARE THERE PENALTIES IF I DON'T CO-OPERATE? YES. 14
WHAT ADVANTAGES ARE THERE IN BRINGING AN INJURED WORKER BACK TO WORK? 15
HOW DO I BRING AN INJURED WORKER BACK TO WORK? 15
WHAT SHOULD I DO WHEN THE INJURED WORKER IS BACK TO WORK? 16

RE-EMPLOYMENT 16

DO I HAVE AN OBLIGATION TO RE-EMPLOY AN INJURED WORKER? 16
WHAT TYPES OF SITUATIONS MAY I EXPERIENCE IN RE-EMPLOYING A WORKER? 17
HOW LONG DOES MY RE-EMPLOYMENT OBLIGATION LAST? 17
WHAT HAPPENS IF I TERMINATE THE INJURED WORKER DURING MY OBLIGATION PERIOD? 17
WHAT HAPPENS IF I DO NOT RE-EMPLOY THE INJURED WORKER? 18
DO DIFFERENT RULES APPLY TO UNIONIZED AND NON-UNIONIZED WORKERS? YES. 18

LABOUR MARKET RE-ENTRY (LMR) 18

WHAT HAPPENS TO THE INJURED WORKER IF I CAN'T BRING THE WORKER BACK TO WORK? 18
WHAT IS LMR AND HOW DOES IT WORK? 18

APPEALS AND MEDIATION 19

WHO HAS THE RIGHT TO APPEAL A WSIB DECISION? 19
ARE THERE DIFFERENT LEVELS OF APPEAL? YES. 19
ARE THERE TIME LIMITS TO APPEAL A WSIB DECISION? YES. 20
HOW DO I APPEAL A WSIB DECISION? 20
WHAT IS "MEDIATION" AND HOW IS IT USED? 20
ARE THERE DIFFERENT RESOLUTION METHODS USED BY AN ARO? YES. 21
WHAT HAPPENS IF A WORKER APPEALS A WSIB DECISION? 21
CAN I RECEIVE ASSISTANCE IN APPEALING A DECISION? YES. 21

RESOURCES 22

OFFICE OF THE EMPLOYER ADVISER (OEA)

What is the OEA and how can it help me?

The OEA is an independent agency of the Ontario Ministry of Labour and has been helping Ontario employers since 1985. Our experts can help you manage workplace safety and insurance costs to give your business a competitive advantage. We provide expert advice to any size employer. We provide mediation, negotiation and representation services throughout the workplace safety and insurance system, primarily to employers who employ fewer than 100 employees. We also offer information on our web site. We don't charge any fees for our services because we are funded through the premiums or administration fees you pay to the Workplace Safety and Insurance Board (WSIB).

What types of services does the OEA provide employers?

Advice

- Professional advisers who are experienced in all aspects of workplace safety and insurance staff our advice centre.
- We help to resolve disputes early in the process and ensure that you are treated fairly at all levels in the system.
- We give you the help you need to get injured workers back to work.
- We provide you with advice on claims and revenue matters.

Representation

- Primarily for employers who employ fewer than 100 workers, we provide representation at appeals and intervene on your behalf at the WSIB and the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

Education

- We have publications designed to meet the day-to-day needs of employers regarding the workplace safety and insurance system. Visit our web site at: www.gov.on.ca/lab/oea.

How do I contact the OEA?

- Telephone the OEA at 1-800-387-0774 or in Toronto at 416-327-0020.
- Send us your questions by e-mail at weboea@mol.gov.on.ca.

INTRODUCTION

What is workplace safety and insurance?

- Workplace safety and insurance is a no-fault insurance system for work-related injuries or diseases and is governed by the *Workplace Safety and Insurance Act, 1997* (WSIA). This means that no matter how careful the employer, or how careless the worker, if the injury is work-related the worker may be entitled to payments and services.

- The WSIB is responsible for promoting the prevention of injuries and diseases in the workplace and for administering the workplace safety and insurance system in Ontario.

REGISTRATION

Do I have to register with the WSIB? Yes.

- If you hire workers or apprentices for your business you must register with the WSIB within 10 days of hiring your first worker.

- If you acquire any or all of an existing business, whether through sale, lease, transfer or other means, you must register with the WSIB within 10 days of acquiring the business.

- If you acquire an existing business you will inherit the seller's accident history and obligations, including any monies owing to the WSIB. In order to avoid this situation it is imperative to request a "purchase certificate" from the seller. This relieves the purchaser from successor obligations under the WSIA.

- It is always best for you to check with the WSIB to determine whether or not you need to register.

Do independent operators / contractors need to register? No.

- If you do not employ anyone, you are not required to register with the WSIB.

- It is always best for you to check with the WSIB to determine whether or not you need to register.

How do I register?

- You can obtain a registration form by downloading it from the WSIB's web site at www.wsib.on.ca, or by requesting a form by calling the WSIB at 1-800-387-0080.

- Once you are registered, the WSIB will assign account and firm numbers to your company.

Is there a penalty if I don't register? Yes.

- You will be charged prior premiums not paid, plus interest and penalties.

- Individuals may also be guilty of a provincial offence punishable by a fine of up to $25,000 or six months imprisonment or both for each offence. A corporation may be fined up to $100,000 for each offence.

COVERAGE

Who is covered by the WSIA?

- Workers are covered by the WSIA. This includes anyone who is employed under a contract of service or who has entered into an apprenticeship.

  Workers can be:
  - a learner;
  - a student;
  - an auxiliary member of a police force;
  - a member of a municipal volunteer fire brigade;
  - a person who assists in a search and rescue operation as directed by the Ontario Provincial Police;
  - a person who assists in a declared emergency;
  - a person deemed by the WSIB to be a worker; and
  - a pupil deemed to be a worker under the *Education Act*.

- A "worker," as defined above, who works in a compulsorily covered industry that is listed in Schedule 1 or Schedule 2, is automatically covered.

- A worker can be employed full-time, part-time or seasonally.

Who is not covered by the WSIA?

- Workers performing certain jobs are excluded from coverage. These workers include (but are not limited to):
  - professional athletes;
  - circus performers;
  - outworkers; and
  - casual workers not for the purpose of the employer's business.

- Certain individuals are not considered to be workers under the WSIA and are not covered. These individuals include:
  - sole proprietors;
  - partners in a business;

- spouses of sole proprietors and partners in a business (unless the spouse receives a wage that appears on the employer's payroll);
- executive officers of a corporation; and
- independent operators who operate a business listed in Schedule 1 and who do not employ any workers.

- Individuals who are not deemed to be workers and want coverage may apply to the WSIB for "optional insurance." The WSIB may require the premium to be paid in advance.

The examples given in this section are not exhaustive. You are responsible for checking with the WSIB, preferably in writing, to find out if you are required to register.

What types of industries are covered by the WSIA?

- Schedule 1 industries include (but are not limited to):
  - forest products;
  - mining and related industries;
  - other primary industries;
  - manufacturing;
  - transportation and storage;
  - retail and wholesale trades;
  - construction;
  - government and related services;
  - other services (including financial, hospitality); and
  - "by application" employers, not compulsorily covered, who have applied for coverage.

- Schedule 2 industries include (but are not limited to):
  - provincial and municipal governments;
  - Crown corporations;
  - telephone companies licensed by the federal government;
  - telegraph companies;
  - railways; and
  - navigation companies.

- "By application" industries include (but are not limited to):
  - financial institutions;
  - health care practitioner practices;
  - trade unions;
  - private day cares;
  - travel agencies; and
  - clubs (health clubs, etc.)

What types of coverage exist?

- Compulsory coverage refers to Schedule 1 and Schedule 2 employers who cannot opt out of the WSIB system. Workers of these employers are protected regardless of whether or not the employer is registered with the WSIB.

- Non-compulsory, or "by application," coverage can be obtained by some employers who run businesses that do not fall under one of the industries listed in Schedules 1 or 2. These employers have the option of applying for coverage under Schedule 1 and, if the WSIB accepts the application, they have the same rights and obligations as employers who are compulsorily covered under Schedule 1.

- Optional insurance applies to independent operators / contractors, sole proprietors and executive officers who voluntarily choose to apply for personal coverage.

See the section on Employer Costs for the definitions of Schedule 1 and Schedule 2 employers.

EMPLOYER COSTS

What do I have to pay to the WSIB?

- What you pay to the WSIB depends on whether you are a Schedule 1 or a Schedule 2 employer.

- Schedule 1 employers have a collective liability so they are not individually responsible for their injury costs. Schedule 1 employers pool a portion of their premiums to pay for claim costs. At the end of every year the WSIB sets the premium rate for the following year in order to reflect claim costs.

- Employer premium costs are determined by the size of their payroll and the premium rate per $100 of payroll charged by the WSIB.

- The premium paid by an employer is equal to the annual insurable earnings (payroll costs), multiplied by the premium rate, divided by 100.

$$\text{Premium} = \frac{\text{Annual Insurable Earnings} \times \text{Premium Rate}}{100}$$

- At the beginning of each year the WSIB sets a ceiling on the amount it will insure an individual worker and the employer stops paying premiums for this worker once the insurable maximum is reached.

- The maximum insurable earnings for an individual worker in 2005 is $67,700.

- Schedule 2 employers are individually responsible for their injury costs and pay dollar for dollar for these claims, plus an administration fee. In 2005 the provisional administration fee for provincially regulated employers is 27.97% and 23.14% for federally regulated employers. The administration fee is set yearly and is levied on the cost of a claim.

Are there other situations when I may have to pay the WSIB? Yes.

- For various offences, the WSIB may levy penalties. These offences include:
  - failing to register your business;
  - failing to report an accident;
  - not reporting, or incorrectly reporting, your premium information;
    - not submitting your payroll reconciliation statement by March 31st each year if your annual payroll is $300,000 or more;
  - underestimating your earnings;
  - knowingly making a false or misleading statement to the WSIB; and
  - wilfully failing to inform the WSIB of a material change in circumstances.

- Individuals may be fined up to $25,000 and/or imprisoned for up to six months for each offence.

- Corporations are liable to a fine not exceeding $100,000 for each offence.

What are experience and merit rating programs?

- Experience and merit rating programs are incentive programs designed to encourage Schedule 1 employers to reduce workplace injuries and occupational diseases, to promote health and safety, and to encourage early and safe return to work. By achieving these objectives Schedule 1 employers may receive a refund on their premiums. However, if these objectives are not met the employer may receive a surcharge on their premiums.

Are there different types of experience and merit rating programs? Yes.

- There are two types of experience rating programs and one merit program. New Experimental Experience Rating (NEER) and Council Amendment to Draft #7 (CAD-7) are experience rating programs, and Merit Adjusted Premium (MAP) is a merit program. Employers in Schedule 1 are grouped into one or more of these programs based on the size of their payroll and business activity.

New Experimental Experience Rating (NEER)

- NEER is the experience rating program for employers, excluding the construction sector, with annual premiums over $25,000.

- NEER compares the employer's actual claim costs over a three-year period to the expected costs for the size and type of business.

- If the actual claim costs are lower than expected, the employer is eligible for a refund.
- If the actual claim costs are higher than expected, the employer will be levied a surcharge.
- You are not penalized for claims involving long-latency illnesses such as asbestosis. The rate group shares the costs of these claims.
- To protect employers from unlimited claim costs, there is a limit on claim costs and firm costs.

2004 NEER Changes

Rating Factor:

- Starting with 2004 claims the minimum rating factor increases to 40%.
- Starting with 2004 claims the maximum rating factor increases to 100%.
- Revised rating factor calculations are:

15% added with the higher of:

Premiums / (Premiums + (5 x Maximum Insurable Earnings))
or
Insurable Earnings / (Insurable Earnings + (225 x Maximum Insurable Earnings))

Reserves:

- There are no reserves on non-health claim costs until claims benefits exceed their average weekly benefit rate.

Council Amendment to Draft #7 (CAD-7)

- CAD-7 is the experience rating program for firms in the construction industry that have annual premiums over $25,000.
- CAD-7 compares the employer's actual number (frequency) of claims over two years, and claim costs over five years, to the expected frequency of the rate group and costs associated with the size of the workforce.
- If the actual frequency (lost-time claims) and costs are lower than expected, the employer may receive a refund.
- If the actual frequency (lost-time claims) and costs are higher than expected, the employer will be levied a surcharge.
- You are not penalized for claims involving long-latency illnesses such as asbestosis. The rate group shares the costs of these claims.

2004 CAD-7 Changes

Claim Frequency Count:

- Starting in January 2004, a new claim under CAD-7 will not count as a frequency until there is full or partial loss of earnings (LOE) for 8 days. The WSIB is responsible for the costs of a claim from the date of accident.
- A frequency is not recorded if non-economic loss (NEL) benefits are paid and loss of earnings benefits are not paid.
- Accident reporting obligations remain the same.
- The change reduces the financial impact of minor claims.

Expected Frequency and Cost Factors:

- Expected frequency factors will be adjusted to reflect actual frequency.
- Starting in 2004, expected cost factors have been adjusted from 30% to 25%.

Rating Factor Changes:

- In 2005 a blended rate of 125% will be applied to rating factors and a multiple of 150% will apply in 2006.

Merit Adjustment Premium (MAP)

- MAP is the merit incentive program for all employers, including construction employers, with annual premiums between $1,000 and $25,000.
- Once you qualify for MAP you will remain in MAP for at least 3 years, despite premium fluctuations below $1000 and over $25,000.
- MAP reviews the number of claims with more than $500 in costs over a three-year period. Claims over $500 are included in your accident record, while claims under $500 are not included.
- Employers who have one or more claims with costs over $500 during the period in review will receive a premium increase between 0% and 50% of their premiums.
- Any claim costing over $5,000 will result in an automatic 10% surcharge on the employer's premium rate, plus any other MAP adjustment.
- A fatality claim will result in an automatic 25% surcharge on the employer's premium rate, plus any other MAP adjustment.
- You are not penalized for claims involving long-latency illnesses such as asbestosis. The rate group shares the costs of these claims.
- Employers who have no claims with costs over $500 during the period in review will receive a 5-10% discount off their premiums.

Are there ways in which I can control the size of my rebate or surcharge? Yes.

The best way to control the size of your rebate or surcharge is to reduce claim frequency and claim costs. This may be achieved through prevention, early and safe return to work, and cost relief measures.

Prevention:

- The most effective way to reduce claim frequency is through prevention. Prevention can be as simple as complying with employer obligations under the *Occupational Health and Safety Act*.

Early and Safe Return to Work:

- Once an injury has occurred it is important to return the injured worker to work as quickly and safely as possible.

Cost Relief:

- Second Injury and Enhancement Fund (SIEF), cost transfer, and third party cost relief are three cost relief methods that Schedule 1 employers may use to reduce the cost of a claim. The WSIB either grants or denies cost relief based on the merits of each request.
  - SIEF transfers compensation and health care costs from a Schedule 1 employer to the insurance fund. Schedule 1 employers may receive SIEF when a worker's pre-existing condition or prior disability contributed to the work-related injury, or prolongs or enhances the period of the work-related disability. You can apply for SIEF relief by writing to the WSIB outlining the pre-existing condition(s). The WSIB may grant relief based on the supporting information in the claim file. The amount of relief granted depends upon the severity of the injured worker's pre-existing condition and the severity of the injury. The amount granted could be between 25-100%. SIEF does not apply to Schedule 2 employers.
  - Cost transfers allow employers in Schedule 1 to apply to have the claim costs transferred to another Schedule 1 employer due to negligence on the part of the other Schedule 1 employer or worker. You may apply for a cost transfer by writing to the WSIB's Prevention Services Division.
  - Third party cost relief allows a worker who is injured by a third party that is not covered under Schedule 1 of the WSIA to file a claim with the WSIB or launch civil action against the third party for negligence. If the worker chooses to file a claim with the WSIB the employer should request third party cost relief from the legal branch of the WSIB.

CONTRACTING OUT WORK

If I contract out work should I be concerned about workplace safety and insurance? Yes.

- In any contracting out situation, there are three possible parties:
  - principal — any person or company that contracts to purchase services;
  - contractor — any person or company that provides the services under the contract; and

- sub-contractor — any person or company that is hired by a contractor to complete part or all of these services.

- The WSIB can hold you, as the principal, responsible for:
  - any premiums on the labour portion of the contract that your contractor (independent operator or other employer) does not pay for the period of the contract; and
  - injury costs resulting from injuries to the contractor's (or sub-contractor's) own employees while they are working for you.

- Principals should obtain a "clearance certificate" from every contractor. A clearance certificate:
  - is issued by the WSIB and indicates that the contractor's WSIB account is in good standing;
  - waives the WSIB's right to hold the principal responsible for any of the contractor's (or sub-contractor's) unpaid premiums and/or injury costs during the life of the clearance certificate.

- The WSIB will determine (upon completing an independent operator questionnaire), whether a contractor or sub-contractor is either:
  - an independent operator;
  - an employer; or
  - a worker.

- Clearance certificates are valid for 60 days, so principals should request a new clearance certificate every 60 days or each time there is a new contract.

ACCIDENTS

As an employer, it is not only in your best interest to maintain a healthy and safe workplace and to prevent workplace injuries and occupational diseases, it is also your legal obligation under the *Occupational Health and Safety Act.*

What is an "accident"?

- According to the WSIA, accidents include:
  - a chance event caused by a physical or natural incident, for example, falling off a ladder or frostbite;
  - a disablement (a condition that has emerged gradually), for example, carpal tunnel syndrome; and
  - a wilful and intentional act, but not an act of the worker, for example, being assaulted by a co-worker.

- Accidents must be reported to the WSIB by completing the Employer's Report of Injury/Disease (Form 7) when an injury causes a worker to do any of the following:
  - obtain health care;

- be absent from his or her regular work beyond the date of accident;
- require modified duties at less than regular pay;
- earn less than regular pay at regular work; or
- require modified work at regular pay for more than seven calendar days.

What steps should I take if an accident happens?

- Administer first aid immediately.

- Immediately arrange and pay for transportation to a medical clinic, health care practitioner or hospital, if required. Have someone accompany the injured worker on your behalf to the medical clinic, if necessary.

- Investigate the accident immediately after first aid/health care treatment has been provided to the worker.
  - Depending on the severity of the accident obtain a signed statement from the injured worker as soon as possible.
  - If a signed statement is not possible, obtain a statement by phone.
  - Interview everyone who may have seen the accident and get witness statements.
  - Ensure the witness reads and clearly understands the statement and have the witness sign and date the statement.
  - If statements are provided in another language, identify the interpreter and the language in which the statement was provided. Have a third person or, if unionized, a union representative witness the interview.
  - Get written statements from any worker who was in view of the accident, but did not see anything.
  - Visit the site of the accident to prepare drawings of the layout of the area and to take photographs of any equipment and materials involved. Do not clean up or re-arrange the site until after the investigation has been completed.

- Report the accident to the WSIB by completing a Form 7.
  - The Form 7 must be completed and signed within three calendar days of learning of the accident and must be received by the WSIB within seven business days from when you learn about the accident.
  - You may attach a letter to the Form 7 outlining any concerns and provide additional information such as copies of statements, drawings, photographs, etc.
  - Give the injured worker a copy of the Form 7 and any attachments provided to the WSIB.
  - If the Form 7 is incomplete, late, or if a copy is not given to the injured worker, the WSIB may levy a penalty of $250 for each infraction.

- The worker will need to sign either the Form 7, or the Form 1492C "Worker's Claim/Consent Form" or the Form 006A "Worker's Report of Injury/Disease," to claim benefits and consent to the release of functional abilities information. The functional abilities information will help the workplace parties develop an appropriate early and safe return to work plan for the injured worker. Workers are required by law to give employers access to this information.

- Provide the worker with a copy of the Functional Abilities Form for Timely Return to Work (FA form) for the health care practitioner to complete and return.

- Pay the injured worker's wages for the day of the accident. You must also maintain your contributions to the injured worker's employment benefits (such as health insurance, life insurance and pension plan contributions) for one year from the date of accident while the injured worker is off work. These contributions must be maintained provided the injured worker continues to pay his/her share of the contributions.

- Return the worker to work. See the "Return to Work" section of this Guide.

What could an injured worker get paid, if the claim is allowed?

- Workers with injury dates after January 1, 1998 who are absent from work will receive LOE benefits, which are 85% of their pre-injury net average earnings (NAE).

- Workers with injury dates prior to January 1, 1998 receive 90% of NAE.

- LOE benefits may be in the form of both a short-term and a long-term benefit rate depending on how long the worker is off work.
  - The "short-term rate" is paid for the first 12 weeks and is based on the worker's earnings from all employers at the time of the injury.
  - The "long-term rate" is paid from the start of the 13th week and is based on the worker's earnings pattern 12 months prior to the injury.
  - Since the WSIB assumes that short-term and long-term earnings are the same, it does not automatically recalculate average earnings. Therefore, you may have to request a recalculation if the short-term earnings do not reflect long-term earnings.

- All benefits are subject to the worker's co-operation.

How long does a worker receive LOE benefits?

- LOE payments continue until the earliest of one of the following:
  - the worker no longer suffers a wage loss as a result of the injury;
  - the worker is no longer impaired as a result of the injury;
  - the worker turns age 65; or
  - two years after the date of the injury, if the worker was 63 years old or older on the date of the injury.

- The worker may also be entitled to a NEL award where a permanent impairment results from the injury.

What types of injury costs are covered by the WSIB?

- Once a claim is accepted the WSIB covers the following injury costs:
  - health care costs;

- labour market re-entry (LMR) services for workers or surviving spouses (these services are designed to assist in return to work);
- LOE benefits; and
- other payments.

How does the WSIB decide whether a worker is entitled to LOE payments and other services?

- The WSIB decides if the claim is work-related. In order for a claim to be considered work-related, all of the following conditions must exist:
  - the employer's business activity is covered under the WSIA;
  - the worker is covered under the WSIA;
  - there is a personal work-related injury;
  - there is proof of accident; and
  - the medical diagnosis is compatible with the accident or disablement history.

- Following an injury, the WSIB is generally provided with information related to the injury by the employer, the worker and the treating health care practitioner(s). The WSIB then weighs the evidence and makes a decision based on the merits of the particular claim, ensuring that its decision is consistent with the provisions of the WSIA and WSIB policies.

- In cases where evidence is approximately equal on both sides of an issue, the WSIB will decide in favour of the worker (or spouse or dependant) who is making the claim. This provision is known as the "benefit of doubt."

RETURN TO WORK

Why would I want to bring an injured worker back to work?

- Under the WSIA, employers and workers have a legal obligation to co-operate in early and safe return to work. The employer and worker are required to:
  - contact each other as soon as possible after the injury occurs and maintain communication throughout the period of the worker's recovery and impairment;
  - attempt to identify and provide suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings;
  - give the WSIB such information as the WSIB may request concerning the worker's return to work; and
  - do other things as may be required.

Are there penalties if I don't co-operate? Yes.

- You could be fined up to 100% of the loss of earnings (LOE) benefits paid to the worker plus the cost of any LMR services.

- If the worker does not co-operate in return to work, the WSIB may reduce or suspend the worker's benefits. If the worker does not co-operate, contact the WSIB. The WSIB will attempt to mediate the dispute and if mediation is unsuccessful the WSIB will provide a decision within 60 days.

What advantages are there in bringing an injured worker back to work?

- You benefit by:
  - reducing your injury costs;
  - keeping your trained workers; and
  - improving morale and employee relations in your workplace.

- Injured workers:
  - maintain their self-worth by being productive and contributing to society; and
  - tend to recover more quickly when they return to work that is safe, worthwhile and restorative at the earliest opportunity.

How do I bring an injured worker back to work?

- Be proactive and establish a return to work program before injuries occur. Your program should include the following steps:
  - determine your needs according to the size of your company, the nature of your business and the number of claims you handle;
  - set clear expectations and procedures;
  - ensure commitment by all parties (senior management, workers, supervisors, claims personnel and union representatives);
  - educate all employees by making them aware of your return to work program;
  - ensure all workers understand their duty to co-operate in return to work as outlined in the legislation, and their role in the return to work process;
  - get feedback on your return to work program by surveying workers, supervisors and union representatives; and
  - evaluate the success of your program.

- Maintain contact with the injured worker in order to:
  - ensure the injured worker knows about your return to work program and his/her legislated duty to co-operate;
  - reassure the worker and find out how he/she is recovering;
  - determine whether the worker is capable of returning to regular or modified work;
  - receive the worker's help in identifying opportunities for return to work; and
  - ensure the worker continues to remain part of the workplace by inviting the worker to staff meetings and social functions and keeping the worker up-to-date on changes and activities in the workplace.

- If the worker is capable of returning to modified work, develop and offer a return to work plan using information from the worker's FA form. Send a copy of the offer to the WSIB.

- The offer should be in writing and should include:
  - a description of the job;
  - the physical demands of the job;
  - the start date and completion date of the plan;
  - the hours of work required for the job; and
  - the wages payable for the job.

- Contact the WSIB regularly (every one to two weeks) to:
  - update the WSIB on your return to work efforts; and
  - ensure you are kept up-to-date on the worker's claim.

What should I do when the injured worker is back to work?

- Remember that you want to encourage the injured worker to get healthy and back to the pre-injury work as quickly as possible, upon returning to work. You should:
  - visit the worker on the job or arrange to meet regularly;
  - ask the worker how he or she is handling the current job duties; and
  - document all of the worker's comments and concerns.

- When necessary, modify the work or the workplace to accommodate the needs of the injured worker. You have a duty to accommodate under the Ontario *Human Rights Code*.

- Adjust your return to work plan as needed:
  - if the worker is ready to return to regular duties sooner than expected;
  - if the worker finds the work too difficult, you may need to remove certain duties or prolong the duration of the job change; and
  - establish new target dates if the job change is extended.

- Complete an Employer's Subsequent Statement (Form 9) so the WSIB knows the worker has returned to work. Update the WSIB about the worker's progress on a regular basis, including:
  - a change in hours;
  - a change in pay; and
  - a return to their regular job.

RE-EMPLOYMENT

Do I have an obligation to re-employ an injured worker?

- You have an obligation to re-employ your injured workers when all of the following conditions are met:
  - you regularly employ twenty or more workers;
  - the worker has worked for you continuously for at least one year; and
  - the worker is unable to work as a result of the injury.

- Construction employers have an obligation to re-employ all injured workers:
  - regardless of the number of workers regularly employed;
  - regardless of the worker's length of service; and
  - when the worker is unable to work as a result of the injury.

What types of situations may I experience in re-employing a worker?

- If there is a disagreement between the employer and the worker as to the fitness of the worker to return to work, the WSIB "shall determine whether the worker is medically able to perform the essential duties of his or her pre-injury employment or to perform suitable work."

- When the worker is able to perform the essential duties of the pre-injury job, your obligation is to offer the worker either the pre-injury job or a comparable job.
  - The "essential duties" of the pre-injury job are all of the duties necessary to produce, at the normal level of productivity, the final product or service required.
  - A "comparable" job would be similar in nature and have the same earnings as the worker's pre-injury job.

- When the worker is able to perform suitable work, your obligation is to offer the worker the first opportunity to accept suitable work when it becomes available. "Suitable work" is any job that:
  - the worker has, or is able to acquire, the necessary skills to perform;
  - the worker is medically able to perform;
  - does not pose a health and safety risk to the worker or any co-worker; and
  - restores the worker's pre-injury earnings as much as possible.

- A new job does not have to be created for suitable work, but as soon as one is available, the worker must be given the first opportunity to accept it.

How long does my re-employment obligation last?

- Your obligation lasts until the earliest of the following:
  - two years after the date of the injury;
  - one year after you receive notice from the WSIB that the worker is fit to return to the essential duties of the pre-injury job; or
  - the worker turns age 65.

What happens if I terminate the injured worker during my obligation period?

- If you terminate or layoff an injured worker within six months of re-employing the worker, the WSIB will presume the employer has not fulfilled its re-employment obligation.
  - The employer can rebut the presumption by proving that the termination was not related to the injury.
  - The employer may be penalized for violating its re-employment obligation.
  - Before terminating or laying off an injured worker, check with the OEA for advice.

What happens if I do not re-employ the injured worker?

- If you breach your re-employment obligations, the WSIB may:
  - levy a fine in the amount of the worker's actual NAE for the year prior to the injury; and
  - make payments to the worker, for a maximum of one year, as if the worker were entitled to LOE payments.

- These penalties are in addition to any penalty for non-co-operation in return to work and premium surcharges.

- If you are not successful in re-employing an injured worker and the WSIB is satisfied with your attempt to re-employ the worker, the WSIB may not penalize you under section 41 of the WSIA.

Do different rules apply to unionized and non-unionized workers? Yes.

- In unionized environments the collective agreement prevails over an employer's re-employment obligations under the WSIA, if the collective agreement affords the worker greater re-employment protection.

- The WSIA acknowledges the seniority provision of collective agreements.

LABOUR MARKET RE-ENTRY (LMR)

What happens to the injured worker if I can't bring the worker back to work?

- An injured worker will be provided with an LMR assessment if any of the following conditions are met:
  - it is unlikely that the worker will be re-employed by his/her employer because of the nature of the injury;
  - the worker's employer has been unable to arrange suitable work for the worker that restores the worker's pre-injury earnings; or
  - the worker's employer is not co-operating in return to work.

What is LMR and how does it work?

- LMR assistance is offered to injured workers to ensure that workers have the skills, abilities and knowledge to re-enter the labour market in jobs that are consistent with their functional abilities and that reduce or eliminate any loss of earnings resulting from the injury.

- An LMR assessment consists of a series of tests to determine if the worker has the skills, abilities and knowledge to re-enter the labour market in the suitable employment or business (SEB) identified for the worker.

- If the worker does not have the skills, abilities and knowledge, a labour market re-entry plan (LMRP) is developed. This usually involves training that will allow the worker to re-enter the labour market in the SEB identified in the LMR assessment.

- An LMRP is not provided if the worker has the skills, abilities and knowledge to re-enter the labour market in the SEB.

- You should take an active part in ensuring that the WSIB's LMRP is realistic and appropriate. Remind the adjudicator that you want to be consulted throughout the LMR process.

- You should monitor the LMR costs to ensure they are reasonable.

APPEALS AND MEDIATION

A careful review of a claim or revenue file should be undertaken before appealing a decision.

Who has the right to appeal a WSIB decision?

- Anyone affected by a WSIB decision can object to the decision, if they think it is unfair or unreasonable based on the facts of the case, including:
  - an employer who disagrees with a decision regarding premiums, penalties or any aspect of a worker's claim; and
  - a worker, or spouse or dependant of a deceased worker, whose claim has been denied or who disagrees with a decision regarding benefits.

Are there different levels of appeal? Yes.

There are three levels of appeal.

1. Operating Level
   - Decisions from the operating level are generated from WSIB decision-makers and include adjudicators, customer service representatives, account managers, revenue auditors, collections representatives, transfer of cost adjusters and others.
   - If you disagree with the decision and have new evidence to support your case you may file an "objection" with the decision-maker. If the decision-maker does not change the decision you may file a formal appeal with the Appeals Branch.

2. Appeals Branch
   - The objection is referred from the operating level to the Appeals Branch and assigned to an Appeals Resolution Officer (ARO) who makes a decision on the appeal.
   - If you disagree with the ARO decision you may file an appeal with the WSIAT.
   - The ARO will refer the appeal to the WSIAT.

3. Workplace Safety and Insurance Appeals Tribunal (WSIAT)
   - The final level of appeal is conducted by the WSIAT.

- The WSIAT is independent of the WSIB.

Are there time limits to appeal a WSIB decision? Yes.

- Keep in mind the time limits for appealing WSIB decisions:
  - 30 days from the decision date to appeal return to work and labour market re-entry decisions; and
  - six months from the decision date to appeal any other decision.

- The WSIB has amended its Appeal Guidelines to generally allow an appeal to be filed within one year of the decision. Employers should continue their best efforts to file return to work and labour market re-entry appeals within 30 days of the decision, and all other appeals within six months. If the appeal period is missed, file your appeal as soon as possible. Employers who encounter problems with appeal periods at the WSIB should contact the OEA for assistance. For more information, refer to "Appendix A" of the WSIB's "Appeal System Practice & Procedures" document on the WSIB's web site at: www.wsib.on.ca.

- ARO decisions must be appealed within six months of the decision date to the WSIAT.

How do I appeal a WSIB decision?

- Write to the WSIB to indicate your disagreement with the decision and include any new information that may change the decision.

- The adjudicator will review the concerns raised and may reconsider his/her decision.

- If the decision is unchanged, a copy of the claim file is sent to you along with an Objection Form, which must be completed and returned to the WSIB to proceed with the objection. The worker's claim file will be provided in two sections (health care and non-health care).

- Once the WSIB's Appeals Branch has received the claim file it is assigned to an Appeals Resolution Officer (ARO). The ARO will contact both parties to identify the issues in dispute and the appropriate method of resolution.

- The ARO may offer mediation to assist in resolving disputes in order to avoid a formal hearing process.

What is "mediation" and how is it used?

- Mediation is an attempt to resolve disputes as early in the adjudication process as possible, while emphasizing a less formal way of resolving a dispute.

- A fundamental objective of mediation is to provide every opportunity to resolve cases without a formal hearing.

- After reviewing a case the ARO decides if the issue(s) in dispute can be mediated.

- If mediation is unsuccessful the appeal will proceed to a hearing.

Are there different resolution methods used by an ARO? Yes.

- The ARO may use one the following resolution methods.
  - **Hearings** can be conducting orally, electronically or in writing. Cases with complex factual questions and issues of credibility will generally be decided by an in-person hearing.
  - **60-day decision option** is used when the issue is straightforward and the parties choose to have a decision made within 60 days based on the information on file and any additional information provided in writing by the parties.
  - **Mediation** is used to resolve disputes early in the adjudication process.
  - **Special Alternative Dispute Resolution (ADR)** is offered in situations where an employer and union representatives have agreed to consider as many as 15 cases at once. If ADR is unsuccessful, the matter proceeds to a hearing.

What happens if a worker appeals a WSIB decision?

- If a worker, or spouse or dependant of a deceased worker, appeals a WSIB decision, the WSIB will send you a Participant Form, which must be completed and returned to the WSIB if you wish to participate in the appeals process. If you have any concerns regarding the appeal you should note them on the Participant Form or attach a letter. If you do not return the form to the WSIB you will not be contacted again until after the final decision has been made.

Can I receive assistance in appealing a decision? Yes.

- The Office of the Employer Adviser (OEA) provides formal representation primarily to employers who have fewer than 100 employees.

- The OEA provides representation at mediations and formal hearings, at both the WSIB and the WSIAT. This service is funded by the premiums you pay the WSIB.

- The OEA may assist employers, primarily those who have fewer than 100 employees, in reviewing cases being considered for appeal. This service is also provided free of charge.

RESOURCES

Office of the Employer Adviser (OEA)
Head Office, 151 Bloor Street West, Suite 704
Toronto, ON M5S 1S4

General Inquiry	Toronto:	416-327-0020
	Toll Free:	1-800-387-0774
Fax	Toronto:	416-327-0726
Web Site	www.gov.on.ca/lab/oea	

Workplace Safety and Insurance Board (WSIB)
200 Front St. W.
Toronto, ON M5V 3J1

General Inquiry	Toronto:	416-344-1000
	Toll Free:	1-800-387-0750
Central Claims Fax	Toronto:	416-344-4684
	Toll Free:	1-888-313-7373
Revenue Operations	Toronto :	416-344-1013
	Toll Free:	1-800-387-8638
Web Site	www.wsib.on.ca	

Workplace Safety and Insurance Appeals Tribunal (WSIAT)
505 University Ave., 7th Floor
Toronto, ON M5G 2P2

General Inquiry	Toronto:	416-314-8800
	Toll Free:	1-888-618-8846
Fax	Toronto:	416-326-5164
Web Site	www.wsiat.on.ca	

Other Telephone Numbers:

Employment Standards Branch	1-800-531-5551
Occupational Health and Safety Branch	1-800-268-8013
Ontario Human Rights Commission	1-800-387-9080